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Decision Not Based On The Facts

The Florida Supreme Court decision, that a tobacco manufacturer can be held liable for a death from lung cancer, is based on a presumption that has not yet been proved: that cigarette smoking causes lung cancer.

About the time the court was handing down this ruling, the board of directors of the American Heart Association passed a resolution urging an educational campaign on cigarette smoking. After studying the resolution and the committee report on which it was based, Dr. Clarence Cook Little, scientific director of the Tobacco Industry Research Committee, issued a statement, which while directly concerned with the relationship of smoking to heart disease is also applicable to the relationship of smoking and lung cancer:

"Now that we have had an opportunity to study the resolution, and the report by the five-man committee on which the resolution is based, we believe there are several points that are worthy of public attention:

"1. Both documents recognize that 'statistical association does not prove casual relationship.'

"2. The report also emphasizes the need for 'expanded biological and medical research (to) be conducted on the relation of smoking to the cardiovascular diseases' and outlines various areas of needed research."

One study, cited by the Heart Association committee, concludes that heart disease is "a multi-factorial disease" and associates it with at least 12 different factors. Nor has the cause of lung cancer been pinpointed; recent studies involve polluted air as a possible cause.

The Florida Supreme Court has reached a decision unjustified by the facts. Before a tobacco company should be held responsible for a person's death, it should be proved responsible beyond question. Medical research has not yet found out enough about the causes of lung cancer to say that cigarette smoking is unquestionably responsible for the disease. Until what causes the specific case of lung cancer can be determined, responsibility cannot be fixed, under our present system of jurisprudence.

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How About Suing The Egyptians?

SOMETIMES the law takes a ludicrous twist and it's hard to explain.

The Florida Supreme Court said in an advisory opinion a few days ago that a tobacco company can be held liable for damages for a death caused by cigarette smoking. This opinion was given to the United States Circuit Court of Appeals in New Orleans which is hearing a suit brought by the widow and son of Edwin Green against the American Tobacco Co. The suit, asking $250,000 damages, charges that Green's death in 1958 from lung cancer was due to smoking American Tobacco cigarettes.

The U.S. Appeals Court, and earlier a Federal District Court, both had agreed that cigarette smoking was the probable cause of death of Green. But both had rejected the argument that the company was legally liable. However, the Appeals court granted a rehearing in the case and asked the Florida court to determine if state law in Florida where Green had lived imposed a liability on the manufacturer.

The Florida court stated that no valid objection would be made to placing liability on the manufacturer "if the public health is to be protected in a practical sense from exploitation by those who, for a profit motive, undertake to supply the vast and ever-increasing variety of products which the people . . . are daily urged to use and consume."

The Florida opinion is counter to that reached in a previous well-publicized cigarette trial in Pittsburgh. There a federal District Court jury found that Liggett & Myers Tobacco Co. was not liable for damages in a suit brought by Otto Pritchard. He had sued the company for $1,250,000 including a $1 million punitive damages on the ground of willful negligence.

The jury in the Pritchard case, as in the Green case in Florida, agreed that cigarette smoking was the direct and probable cause of lung cancer. But it said that Pritchard voluntarily assumed the risk when he smoked and that the company had given no express warranty of the cigarette's safety.

In the absence of any determination by the Pure Food and Drug Administration, or by congressional act, or by any conclusive determination by scientific and medical research that smoking causes lung cancer, how is it possible to hold a manufacturer liable for such damages when tobacco in all of its forms has been consumed by human beings for centuries and dating back probably prior to the Egyptians?

Such conclusions are the same as suing the manufacturer of alcoholic beverages because somebody drank too much and died of cirrhosis of the liver or had delirium tremens and died of a brain hemorrhage.

It reminds us of the report of a consumers' research digest years ago which stated there was enough poison in a tube of toothpaste to kill a person. Who is going to eat a tube of toothpaste? And if they did, why should the manufacturer be held liable?

Tobacco is a product of nature just as marijuana. But marijuana has been declared to be illegal as to its cultivation and distribution. Anyone involved in marijuana traffic, or the traffic of opium and heroin, is subject to prosecution under criminal statutes.

It appears that during the past generation lung cancer has increased. It appears also that there seems to be a greater incidence of lung cancer among smokers than among non-smokers. But because lung cancer, is found among non-smokers, it seems highly ridiculous to conclude that someone who dies of lung cancer and is a smoker died because of the tobacco manufactured by a particular company.

Tobacco, liquor and a myriad of other products could, by twisted and exaggerated reasoning and deduction, be the subject of similar suits. How about the pesticides? There is no limit.

A suit against a manufacturer for marketing products, which the United States Public Health Service or the American Medical Association have not recommended be banned by law because of their dangerous effects, is unjust and unfair. What does a jury know about determining such questions?

1005150692/4